



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

APR - 1 2008

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RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 APR - 2 PM 3: 16
REGIONAL HEARINGS
CLERK

Cristina S. Belaval Burger, Esq.
Jorge J. Garcia Diaz, Esq.
Martinez, Odell, & Calabria
P.O. Box 19098
San Juan, Puerto Rico 00919-0998

Re: In the Matter of Lifestyle Footwear, Inc.
Docket No. RCRA-02-2007-7115

Dear Sir and Madam:

Enclosed is a copy of the Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency.

Please arrange for payment of this penalty according to the instructions given in the Order.

Sincerely yours,


Stuart N. Keith

Assistant Regional Counsel
Waste & Toxic Substances Branch
Office of Regional Counsel

Enclosures

cc:

Mr. Julio I. Rodriguez
Director
Land Pollution Regulation Program
Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

Spencer T. Nissen (ALJ)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2007 APR -2 PM 3:16
REGIONAL HEARING
CLERK

In the Matter of

Lifestyle Footwear, Inc.,

Respondent.

Proceeding under Section 3008 of the
Solid Waste Disposal Act, as
amended.

**CONSENT AGREEMENT
AND
FINAL ORDER**

Docket Number: RCRA-02-2007-7115

PRELIMINARY STATEMENT

This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901, *et seq.* ("RCRA" or the "Act").

Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the Administrator to enforce violations of the Act and the regulations promulgated or authorized pursuant to it. Complainant in this proceeding, the Director of the Caribbean Environmental Protection Division ("CEPD"), EPA Region 2, issued a "Complaint and Notice of Opportunity for Hearing" to Respondent, Lifestyle Footwear, Inc., (hereinafter "Respondent") bearing the docket number RCRA-02-2007-7115. The Complaint alleged that Respondent had violated the requirements of RCRA concerning the management of hazardous waste.

EPA and Respondent have subsequently engaged in settlement discussions with respect to the violations contained in the aforementioned Complaint. Both EPA and Respondent have decided that settlement of this matter on the terms set forth in this Consent Agreement/Final Order ("CA/FO") is an appropriate means of resolving the claims against Respondent without further litigation.

This CA/FO is being issued pursuant to, and under the authority of, 40 C.F.R. § 22.18(b). No adjudicated finding of fact or conclusions of law have been made. Respondent neither admits nor denies the Findings of Fact or Conclusions of Law set forth below.

FINDINGS OF FACT

1. Respondent owns and operates a business engaged in the manufacture of footwear products.
2. Respondent conducts business at PR Road 125, km 3.8, Industrial Park, Pueblo Ward in Moca, Puerto Rico (hereinafter "the facility").
3. Since at least September of 2000, Respondent has generated hazardous wastes at the facility.
4. In the manufacturing process at the facility, Respondent has used various industrial chemicals and solvents. The hazardous wastes generated by Respondent at its facility have included, but have not been limited to: waste paint related materials bearing EPA waste codes numbers D001 and D035, waste solids containing flammable liquid, bearing waste codes F005 and D001, and spent fluorescent light bulbs.
5. Pursuant to Section 3010 of RCRA, 42 U.S.C. § 6930, Respondent informed EPA, through a notification under the name Lifestyle Footwear, Inc., and dated September, 6, 2000, that it generated hazardous waste at its facility. In a subsequent notification, dated December 8, 2006, Respondent informed EPA that it generated sufficient waste to put it in the Small Quantity Generator Status as that term is defined in 40 C.F.R. § 260.10.
6. In response to the initial Notification, EPA provided Respondent with EPA Identification Number PRR 980762835 for the facility.
7. On March 20, 2006, duly designated representatives of EPA ("Inspectors") pursuant to Section 3007 of the Act, 42 U.S.C. § 6927, conducted a compliance evaluation inspection ("the inspection") of Respondent's facility.
8. On or about August, 25, 2006, EPA issued to Respondent a combined Notice of Violation and Information Request Letter, ("NOV and IRL").
9. The NOV, which was issued pursuant to Section 3008 of the Act, 42 U.S.C. § 6928, informed Respondent that EPA had identified a number of potential RCRA violations at Respondent's facility and asked Respondent to provide a description and documentation of the actions it had taken to correct the violations identified by EPA in the NOV.
10. The IRL, which was issued pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, sought, in part, (a) information and documentation relating to hazardous waste activities at Respondent's facility; and (b) other information or documentation that

would assist the EPA in evaluating Respondent's compliance with RCRA at its facilities.

11. Beginning on or about September 12, 2006 and on several subsequent dates Respondent submitted its Responses to the NOV and IRL.

CONCLUSIONS OF LAW

12. Respondent is a "person" as that term is defined in Section 1004(15) of the Act, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.
13. Respondent, in carrying out its business, generated "solid waste" as that term is defined in 40 C.F.R. § 261.2 at its facility.
14. Respondent, in carrying out its business, generated "hazardous waste" as that term is defined in 40 C.F.R. § 261.3 at its facility.
15. Respondent, was, at all times relevant to the Complaint, a "generator" as that term is defined in 40 C.F.R. § 261.3 of hazardous waste at its facility.
16. Based on the inspection and information contained in the Responses to EPA's NOV and IRL, EPA issued a Complaint on September 26, 2007, to Respondent. The Complaint alleged seven violations which occurred in 2006 including: (1) failure to make hazardous waste determinations as required by 40 C.F.R. § 262.11; (2) storage of hazardous waste without having a permit or having obtained interim status as required by Section 3005 of the Act, 42 U.S.C. § 6925 and 40 C.F.R. § 270.1(c); (3) failure to keep hazardous waste containers closed as required by 40 C.F.R. § 264.173(a); (4) storage of hazardous waste in containers in poor condition or leaking as prohibited by 40 C.F.R. § 264.171; (5) failure to minimize risks of a fire, explosion, or release of hazardous waste as required by 40 C.F.R. § 264.177(c); (6) failure to provide personnel with hazardous waste training as required by 40 C.F.R. § 264.16; and (7) failure to label containers with the words "used oil" as required by 40 C.F.R. § 279.22(c)(1).
17. On October 26, 2007, Respondent filed an Answer to the Complaint.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the allegations set forth in the Complaint; (c) neither admits nor denies the Findings of Fact or Conclusions of Law stated above; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to contest or appeal that Final Order.

It is further hereby agreed by and between Complainant and Respondent, and voluntarily and knowingly accepted by Respondent, that the parties shall comply with the following terms and conditions:

1. Respondent shall immediately, if it has not already done so, comply with the terms and conditions of paragraphs "1" through "10" of the Compliance Order that was issued to Respondent as part of the Complaint, Compliance Order and Notice of Opportunity for Hearing on September 27, 2007, bearing Docket Number RCRA-02-2007-7115. Any submittal concerning the Compliance Order should be sent to:

Eduardo R. Gonzalez, P.E., DEE, MBA
Response & Remediation Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
Centro Europa Building, Suite 417
1492 Ponce de Leon Avenue
San Juan, Puerto Rico 00907

Respondent shall hereinafter comply with all applicable regulations regarding the generation, storage, and management of hazardous waste and used oil as set forth in 40 C.F.R Parts 260 to 279.

2. This Consent Agreement and Final Order is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, Commonwealth, and local law and regulations governing the generation, handling, treatment, storage, transport and disposal of hazardous waste.

3. Nothing in this document is intended nor shall it be construed, to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent if it is later determined that Respondent has made any material misrepresentations or has provided materially false information in connection with this Consent Agreement.

4. Respondent shall pay a civil penalty to EPA in the total amount of **Seventy Five Thousand dollars (\$75,000.00)**. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, the United States of America**", and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **In the Matter of Lifestyle Footwear, Inc., and shall bear thereon the Docket No. RCRA-02-2007-7115**). Payment of the penalty must be *received* at the above address on or before forty-five 45 calendar days after the Effective Date of this CA/FO (the "due date").

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- (1) Amount of Payment
- (2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- (3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- (4) Federal Reserve Bank of New York ABA routing number: 021030004
- (5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- (6) Name of Respondent: **Lifestyle Footwear Inc.**
- (7) Case Number: **RCRA-02-2007-7115**

Such EFT must be received on or before 45 calendar days after the Effective Date of this CA/FO.

Whether payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Stuart N. Keith
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - Room 1623
New York, New York 10007

and

Karen Maples
Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, New York 10007

- a. Failure to pay the payment in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
 - c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
5. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint in this matter upon full payment of the penalty. The parties agree that all terms of the settlement are set forth herein. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

6. The provisions of this Consent Agreement shall be binding upon both Complainant and Respondent along with their authorized representatives and successors or assigns.
7. Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on this Consent Agreement or on any of the matters herein stated, or on the accompanying Final Order.
8. Respondent waives any rights it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with, and to reply to any memorandum or communication addressed to, the Regional Administrator or the Deputy Regional Administrator, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.
9. The undersigned signatory for Respondent certifies that he or she is duly and fully authorized to enter into this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
10. Respondent consents to the service of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
11. The effective date of this Consent Agreement and Final Order shall be the date that it is filed with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.
12. Each party hereto agrees to bear its own costs and fees in this matter.

RESPONDENT: Lifestyle Footwear, Inc.

BY: *Roger Schultz*
 Authorizing Signature

NAME: *Roger Schultz*
 (PLEASE PRINT)

TITLE: *General Manager*

DATE: *3/11/08*

COMPLAINANT:
Carl Axel-Peter Soderberg
 Carl Axel-Peter Soderberg, Director
 Caribbean Environmental Protection Division
 U.S. Environmental Protection Agency
 Centro Europa Building, Suite 417
 1492 Ponce de Leon Avenue, Stop 22
 San Juan, PR 00907-4127
 DATE: *03-20-08*

In the Matter of Lifestyle Footwear, Inc.
Docket No. RCRA-02-2007-7115

FINAL ORDER

The Regional Administrator of EPA, Region 2 concurs in the foregoing Consent Agreement in the case of *In the Matter of Lifestyle Footwear, Inc.*, bearing Docket No. RCRA-02-2007-7115. Said Consent Agreement having been duly accepted and entered into by the parties, is hereby ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b) (3) and shall constitute an order issued under authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

DATED: Mar. 27, 2008
New York, New York



for Alan J. Steinberg
Regional Administrator
U.S. Environmental Protection Agency -
Region 2
290 Broadway
New York, New York 10007-1866

In the Matter of Lifestyle Footwear, Inc.
Docket No. RCRA-02-2007-7115

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail:

Spencer T. Nissen
Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
401 M Street, S.W.
Washington, DC 20460

Copy by Certified Mail Return Receipt Requested:

Cristina S. Belaval Burger, Esq.
Jorge J. Garcia Diaz, Esq.
Martinez, Odell, & Calabria
P.O. Box 19098
San Juan, Puerto Rico 00919-0998

Dated: APR - 1 2008
New York, New York


